IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.Rev.Pet.No. 619 of 1999()

CRA.85/1998 of IIND ADDL.SESSIONS COURT, KOZHIKODE
CC.438/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY
.....

REVN. PETITIONER(S): APPELLANT-ACCUSED

M.BIJU @ RAJESH,
AGED 27 YEARS, S/O. GOVINDANKUTTY,
AGASTHIAN BUILDING, MAVOOR ROAD,
KOZHIKODE.

BY ADV. SRI.P.K.RAMAKUMAR

RESPONDENT(S): RESPONDENT/ COMPLAINANT
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1. **STATE OF KERALA,**
   REPRSENTED BY PUBLIC PROSECUTOR,
   AT THE HIGH COURT OF KERALA.

2. **THE SUB INSPECTOR OF POLICE,**
   MUKKAM POLICE STATION.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/03/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ORDER ON Crl.M.P. NO.2763/1999 IN Crl.R.P. 619/1999

DISMISSED

29/03/2007 **SD/- K.HEMA, JUDGE**

TRUE COPY

P.A. TO JUDGE

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K.HEMA, J.

Crl.R.P. No.619 of 1999

Dated 29th March, 2007.

O R D E R

Revision petitioner was convicted and sentenced for offence under Section 411 of Indian Penal Code to undergo rigorous imprisonment for one year by Magistrate's Court. In appeal, conviction was confirmed, but sentence was reduced to rigorous imprisonment for a period of six months taking into account the age of revision petitioner (as 23 years) and that there is no earlier conviction. The said conviction and sentence are challenged in this revision.

2. According to prosecution, certain articles were stolen from the house of PW1. Revision petitioner, who is the fourth accused allegedly received the stolen articles M.Os 1, 2, 6 and 7 (mixi, jars and Panasonic tape recorder) knowing the articles to be stolen. PW3 Circle Inspector arrested first accused. On the basis of the confession made by him, PW4 was traced out and as per the statement given by fourth accused, M.Os. 1,2 and 6 (mixi and jars) were recovered from PW4 under Ext. P3 mahazar. PW7 Circle Inspector, in the course of investigation in another crime, arrested third accused and pursuant to the statement given by him, fourth accused was pointed out and he was arrested. As per the statement given by fourth accused, PW7 proceeded to PW5 who produced M.O.7, which was seized under Ext. P5 mahazar. The petitioner was tried along with accused 1 to 3. But, accused 1 and 4 alone were convicted and

others were acquitted.

3. As per the prosecution case, revision petitioner dishonestly received or retained the mixi and the Panasonic tape recorder which are stolen properties knowing or having reason to believe the same to be stolen. To prove the case, prosecution relied upon mainly the evidence of PWs 1, 3, 4, 5 and 7. Documentary evidence such as Exts. P3 and P5 seizure mahazars were also relied upon. M.Os.1,2 and 6 (mixi and jars) and M.O.7 tape recorder were also produced.

4. Both the courts believed the evidence of PW1 to hold that the articles involved in this case were stolen from her possession. She gave evidence that her husband is working abroad and she came to know that articles kept in the bedroom were stolen by breaking open the lock of the house, while she was residing in the Tharavadu house of her husband. According to learned counsel appearing for revision petitioner, PW1's evidence is totally unreliable because she gave inconsistent evidence relating to lodging of complaint. She deposed in the chief examination that she had given a complaint to the police. But, in the chief itself she corrected that it was a mistake. In the cross examination she deposed that her brother-in-law had given a complaint to the police.

5. The above inconsistency is harped upon to argue that PW1's evidence cannot be believed at all. Both the courts relied upon the

evidence of PW1 on sound reasons. I do not find that those reasons are perverse so as to warrant any interference. It is only probable, if PW1's evidence is believed, that her husband being working abroad, she may have to consult her husband before she gave a complaint and she may also hesitate to give a complaint in his absence. The evidence given by PW1 was after two years of incident. The mistakes committed by her can be accounted for the long lapse of time after the incident. At any rate, she has absolutely no reason why she should give false evidence before the court that her articles were stolen. PW1's evidence was rightly accepted despite the inconsistency pointed out. It is only natural that in the case of any witness certain inconsistencies and embellishments can be found. But, for that reason alone, the evidence cannot be rejected.

6. The evidence of PW1 establishes that mixi, jars and tape recorder M.Os.1, 2, 6 and 7 were stolen from her house. M.O.1 was identified by her with reference to the inscription of her name at the bottom of the mixi. There is absolutely no reason why her evidence regarding identification of the article should be rejected. As per the evidence of PW1, theft took place in April 1995. The evidence of PW3 shows that M.Os.1, 2 and 6 were seized in April 1995 itself.

7. PW3 is the Circle Inspector of police who deposed that the mixi and jars were seized from the possession of PW4. PW4 gave evidence that

he had produced M.Os.1, 2 and 6 before PW3 and he had signed in the mahazar Ext. P3, which according to PW3 is the mahazar, under which those articles were seized. PW4 identified those articles in court. He also stated that he had purchased the same from one Rajesh @ Baiju. The prosecution case is that it was as per the said statement given by first accused to the Circle Inspector (that those articles were sold to Rajesh @ Baiju) and as pointed out by first accused that the recovery of the stolen articles could be made. PW4 was pointed out by accused and it was pursuant to an alleged statement that recovery was made from PW4 when he produced the same stating that fourth accused had sold the articles to him.

8. The evidence of PW4 that he had purchased M.Os.1,2 and 6 from Rajesh @ Baiju, which is also the name of fourth accused, has to be believed and there is absolutely no reason to reject this portion of his evidence. It is true that he did not identify fourth accused from court. The conduct of accused (he was only a witness at the time when PW3 questioned him) in taking the Inspector to PW4 is quite relevant and admissible, even if such alleged statement cannot be admitted as confession statement admissible under Section 27 of Evidence Act.

9. The evidence of PWs 3 and 4 and Ext. P3 would establish that M.Os.1, 2 and 6, which according to PW1 are stolen articles, were

recovered from the possession of PW4 and the evidence of PW4 will show that he had purchased those articles from fourth accused. The recovery was effected in April 1995. All these facts put together will clearly establish that accused was in possession of stolen articles immediately after theft. As per Section 114(a) of Evidence Act, the court may presume that a man who is in possession of stolen goods soon after the theft is either thief or has received the goods knowing them to be stolen, unless he can account for his possession.

10. The lower appellate court has rightly drawn the presumption against fourth accused by virtue of Section 114(a) of Evidence Act. Fourth accused has not given any explanation for possession of stolen articles immediately after theft. Therefore, the court rightly presumed that he received the stolen articles knowing them to be stolen as per Section 114(a) are made out. Learned counsel appearing for revision petitioner vehemently argued that the prosecution has to prove that the knowledge of the accused that the articles in his possession are stolen.

11. There can be no doubt that the knowledge of accused that the articles are stolen must be established by the prosecution. It is certainly a necessary ingredient of offence under Section 411 of IPC. The said fact can be established by drawing a presumption under Section 114(a). If recent possession of stolen articles by accused is proved by the

prosecution, the court may presume that the articles were received by accused knowing them to be stolen. Therefore, this is a case where the court can safely to draw a presumption as required under Section 114(a), as rightly done by lower appellate court.

12. The dictum laid down in the decision reported in ***Mohan Lal vs. State of Maharashtra*** **(1979 CRL. L.J. 1328)** referred to by petitioner's counsel is not applicable to the facts of this case. In the said case, prosecution failed to prove possession of article by accused. It was found that there was nothing to show that the accused in that case had got the stolen articles and therefore he was found not guilty. It is needless to say that in a case where the possession of stolen articles by accused is not proved, presumption under Section 114(a) will not be available to the prosecution.

13. It was also argued on the basis of the decision reported in ***Trimbak vs. State of Madhya Pradesh*** **(A.I.R 1954 S.C. 39)** that, it is the duty of the prosecution to bring home the guilt of the accused under Section 411 IPC by proving 1) that the stolen article was in possession of the accused 2) that some person other than the accused had possession of the property before the accused got possession of it, and 3) that the accused had knowledge that the property was stolen property. There can be no dispute about this proposition. In this case, the fact that the stolen

article was in possession of accused is sufficiently established.

14. It is also to be established that by virtue of Section 114(a) accused had knowledge that the property was stolen property. First accused was in possession of stolen articles immediately after theft, since as per the evidence of PW1 it was pursuant to the statement given by first accused that fourth accused was pointed out and PW3 could get at fourth accused. Subsequently, recovery of stolen articles from the possession of PW4 was effected. Therefore, all the ingredients of Section 411 are established and hence there is absolutely no reason to interfere with the conviction or the sentence.

15. I have not discussed anything with respect to the possession of the stolen article M.O.7, which was allegedly stolen by third accused from whom fourth accused had purchased the same which was later recovered as per an alleged statement and the conduct of fourth accused in pointing out PW5. On going through the impugned order of trial court, acquittal of third accused does not appear to be proper because factual findings are all contrary to the evidence adduced in this case and even as per the judgment, the findings are inconsistent

16. Learned counsel appearing for revision petitioner also submitted that the sentence may be reduced because second and third accused were acquitted. I do not find the acquittal of second and third accused can be a

reason for reducing the sentence. Lower appellate court has already reduced the sentence to six months rigorous imprisonment and no further reduction is called for.

This revision petition is dismissed.

K.HEMA, JUDGE.

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